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OCA 2213-88

[COMMITTEE PRINT]

JUNE 28, 1988

SHOWING AN AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 4719, AS ADOPTED BY THE  
SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY

Strike all after the enacting clause and insert the  
following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the ``Drug-Free Workplace Act of  
3 1988``.

4 SEC. 2. DRUG-FREE WORKPLACE REQUIREMENTS FOR FEDERAL  
5 CONTRACTORS.

6 (a) DRUG-FREE WORKPLACE REQUIREMENT.--No person or  
7 organization shall be considered a responsible source, under  
8 the meaning of such term as defined in section 4(8) of the  
9 Office of Federal Procurement Policy Act (41 U.S.C. 403(8)),  
10 for the purposes of being awarded a contract for the  
11 procurement of any property or services from any Federal  
12 agency unless such person or organization has certified to  
13 the contracting agency that it will provide a drug-free  
14 workplace by--

15 (1) publishing a statement notifying employees that

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1 the unlawful manufacture, distribution, dispensation,  
2 possession, or use of a controlled substance is  
3 prohibited in the person's or organization's workplace  
4 and specifying the actions that will be taken against  
5 employees for violations of such prohibition;

6 (2) establishing a drug-free awareness program to  
7 inform employees about--

8 (A) the dangers of drug abuse in the workplace;

9 (B) the person's or organization's policy of  
10 maintaining a drug-free workplace;

11 (C) any available drug counseling,  
12 rehabilitation, and employee assistance programs; and

13 (D) the penalties that may be imposed upon  
14 employees for drug abuse violations;

15 (3) requiring that each employee to be engaged in the  
16 performance of such contract, as a condition of  
17 employment on such contract, certify that--

18 (A) the employee has received a copy of the  
19 statement required by paragraph (1), understands its  
20 contents, and will abide by its terms; and

21 (B) the employee will notify the employer of any  
22 criminal drug statute conviction for a violation  
23 occurring in the workplace no later than 5 days after  
24 such conviction;

25 (4) notifying the contracting agency within 10 days

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1 after receiving notice under paragraph (3)(B) from an  
2 employee or otherwise receiving actual notice of such  
3 conviction;

4 (5) imposing a sanction on, or requiring the  
5 satisfactory participation in a drug abuse assistance or  
6 rehabilitation program by, any employee who is so  
7 convicted, as required by section 4; and

8 (6) making a good faith effort to continue to  
9 maintain a drug-free workplace through implementation of  
10 paragraphs (1), (2), (3), (4), and (5).

11 (b) SUSPENSION, TERMINATION, OR DEBARMENT OF THE  
12 CONTRACTOR.--

13 (1) GROUNDS FOR SUSPENSION, TERMINATION, OR  
14 DEBARMENT.--Each contract awarded by a Federal agency  
15 shall be subject to suspension of payments under the  
16 contract or termination of the contract, or both, and the  
17 contractor thereunder shall be subject to debarment, in  
18 accordance with the requirements of this section if the  
19 board of contract appeals of the contracting agency  
20 determines that--

21 (A) the contractor has made a false certification  
22 under subsection (a);

23 (B) the contractor violates such certification by  
24 failing to carry out the requirements of paragraph  
25 (1), (2), (3), (4), or (5) of subsection (a); or

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1 (C) such a number of employees of such contract  
2 have been convicted of violations of criminal drug  
3 statutes for violations occurring in the workplace as  
4 to indicate that the contractor has failed to make a  
5 good faith effort to provide a drug-free workplace as  
6 required by subsection (a).

7 (2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT  
8 PROCEEDINGS.--If a contracting officer determines, in  
9 writing, that cause for suspension, termination, or  
10 debarment exists, a suspension, termination, or debarment  
11 proceeding subject to this subsection shall, on  
12 application by a contracting officer of an agency, be  
13 conducted by the board of contract appeals of the agency  
14 which conducts the procurement. The board of contract  
15 appeals shall, based upon a preponderance of the evidence  
16 presented, resolve all issues of fact, determine whether  
17 a basis exists for the suspension or termination of the  
18 contract or debarment of the contractor, and issue a  
19 final decision in favor of or against suspension or  
20 termination of the contract or debarment of the  
21 contractor. A proceeding, decision, or order of the  
22 pursuant to this subsection shall not be subject to  
23 interlocutory appeal or review. Determinations and final  
24 decisions of the board of contract appeals shall be final  
25 unless appealed by the contractor to the United States

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1 Court of Appeals for the Federal Circuit within 60 days  
2 after the receipt by the contractor of a copy of a final  
3 decision of the board of contract appeals. Section 10(b)  
4 of the Contract Disputes Act of 1978 (41 U.S.C. 609(b))  
5 shall apply with respect to the finality of such board  
6 determinations and decisions under this paragraph.

7 (3) CONDUCT BY GSA BOARD.--In the case of an agency  
8 that has not established a board of contract appeals  
9 under section 8(a)(1) of the Contract Disputes Act of  
10 1978 (41 U.S.C. 607(a)(1)), the General Services  
11 Administration Board of Contract Appeals shall make the  
12 determinations and issue final decisions under paragraph  
13 (2) for such agencies. Section 10(b) of the Contract  
14 Disputes Act of 1978 (41 U.S.C. 609(b)) shall apply with  
15 respect to the finality of such Board determinations and  
16 decisions under this paragraph.

17 (4) EFFECT OF DEBARMENT.--Upon issuance of any final  
18 decision under this subsection requiring debarment of a  
19 contractor, such contractor shall be ineligible for award  
20 of any contract by any Federal agency and for  
21 participation in any future procurement by any Federal  
22 agency for a period specified in the decision, not to  
23 exceed 5 years, except that an award to such contractor  
24 may be made if the head of the agency determines, in his  
25 or her discretion, that the award of such contract is in

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1 the public interest. Upon issuance of any final decision  
2 recommending against debarment of the contractor, the  
3 contractor shall be compensated as provided by law or  
4 regulations.

5 SEC. 3. DRUG-FREE WORKPLACE REQUIREMENTS FOR FEDERAL GRANT  
6 RECIPIENTS.

7 (a) DRUG-FREE WORKPLACE REQUIREMENT.--No person or  
8 organization shall receive a grant from any Federal agency  
9 unless such person or organization has certified to the  
10 granting agency that it will provide a drug-free workplace  
11 by--

12 (1) publishing a statement notifying employees that  
13 the unlawful manufacture, distribution, dispensation,  
14 possession, or use of a controlled substance is  
15 prohibited in the grantee's workplace and specifying the  
16 actions that will be taken against employees for  
17 violations of such prohibition;

18 (2) establishing a drug-free awareness program to  
19 inform employees about--

20 (A) the dangers of drug abuse in the workplace;

21 (B) the grantee's policy of maintaining a drug-  
22 free workplace;

23 (C) any available drug counseling,  
24 rehabilitation, and employee assistance programs; and

25 (D) the penalties that may be imposed upon

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1 employees for drug abuse violations;

2 (3) requiring that each employee to be engaged in the  
3 performance of such grant, as a condition of employment  
4 on such grant, certify that--

5 (A) the employee has received a copy of the  
6 statement required by paragraph (1), understands its  
7 contents, and will abide by its terms; and

8 (B) the employee will notify the employer of any  
9 criminal drug statute conviction for a violation  
10 occurring in the workplace no later than 5 days after  
11 such conviction;

12 (4) notifying the granting agency within 10 days  
13 after receiving notice of a conviction under paragraph  
14 (3)(B) from an employee or otherwise receiving actual  
15 notice of such conviction;

16 (5) imposing a sanction on, or requiring the  
17 satisfactory participation in a drug abuse assistance or  
18 rehabilitation program by, any employee who is so  
19 convicted, as required by section 4; and

20 (6) making a good faith effort to continue to  
21 maintain a drug-free workplace through implementation of  
22 paragraphs (1), (2), (3), (4), and (5).

23 (b) SUSPENSION, TERMINATION, OR DEBARMENT OF THE  
24 GRANTEE.--

25 (1) GROUNDS FOR SUSPENSION, TERMINATION, OR

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1       DEBARMENT.--Each grant awarded by a Federal agency shall  
2       be subject to suspension of payments under the grant or  
3       termination of the grant, or both, and the grantee  
4       thereunder shall be subject to debarment, in accordance  
5       with the requirements of this section if the agency head  
6       of the granting agency or his official designee  
7       determines, in writing, that--

8               (A) the grantee has made a false certification  
9       under subsection (a);

10              (B) the grantee violates such certification by  
11       failing to carry out the requirements of paragraph  
12       (1), (2), (3), (4), or (5) of subsection (a); or

13              (C) such a number of employees of such grantee  
14       have been convicted of violations of criminal drug  
15       statutes for violations occurring in the workplace as  
16       to indicate that the grantee has failed to make a  
17       good faith effort to provide a drug-free workplace as  
18       required by subsection (a).

19       (2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT  
20       PROCEEDINGS.--A suspension, termination, or debarment  
21       proceeding subject to this subsection shall be conducted  
22       in accordance with applicable law, including Executive  
23       Order 12549 or any superseding Executive order and any  
24       regulations promulgated to implement such law or  
25       Executive order.



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1           (3) EFFECT OF DEBARMENT.--Upon issuance of any final  
2       decision under this subsection requiring debarment of a  
3       grantee, such grantee shall be ineligible for award of  
4       any grant from any Federal agency and for participation  
5       in any future grant from any Federal agency for a period  
6       specified in the decision, not to exceed 5 years, except  
7       that an award to such grantee may be made if the head of  
8       the agency determines, in his or her discretion, that the  
9       award of such grant is in the public interest. Upon  
10      issuance of any final decision recommending against  
11      debarment of the grantee, the grantee shall be  
12      compensated as provided by law or regulations.

13   **SEC. 4. EMPLOYEE SANCTIONS AND REMEDIES.**

14      A grantee or contractor shall, within 30 days after  
15      receiving notice from an employee of a conviction pursuant to  
16      section 2(a)(2)(B) or 3(a)(2)(B)--

17           (1) terminate or suspend such employee's employment  
18      in accordance with applicable law and collective  
19      bargaining agreements; or

20           (2) require such employee to satisfactorily  
21      participate in a drug abuse assistance or rehabilitation  
22      program approved for such purposes by a Federal, State,  
23      or local health, law enforcement, or other appropriate  
24      agency.

25   **SEC. 5. WAIVER.**

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1 (a) IN GENERAL.--A termination, suspension, or debarment  
2 under this Act may be waived by the head of an agency with  
3 respect to a particular contract or grant if--

4 (1) in the case of a waiver with respect to a  
5 contract, the head of the agency determines, after the  
6 issuance of a final determination under section 3(b) by a  
7 board of contract appeals regarding a contract entered  
8 into by that agency, that suspension or termination of  
9 the contract or debarment of the contractor, or refusal  
10 to permit a person or organization to be treated as a  
11 responsible source for a contract, as the case may be,  
12 would severely disrupt the operation of such agency to  
13 the detriment of the Federal Government or the general  
14 public; or

15 (2) in the case of a waiver with respect to a grant,  
16 the head of the agency determines that suspension or  
17 termination of the grant or debarment of the grantee  
18 would not be in the public interest.

19 (b) EXCLUSIVE AUTHORITY.--The authority of the head of an  
20 agency under this section to waive a termination, suspension,  
21 or debarment shall not be delegated.

22 **SEC. 6. AUTHORITY OF BOARDS.**

23 Not later than 90 days after the date of enactment of  
24 this Act, the chairman of each board of contract appeals  
25 shall prescribe rules and procedures governing actions under

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1 this Act. Each judge of such board may administer oaths and  
2 affirmations and issue subpoenas.

3 **SEC. 7. DEFINITIONS.**

4 For purposes of this Act--

5 (1) the term ``drug-free workplace`` means a site for  
6 the performance of work done in connection with a  
7 specific grant or contract described in section 2 or 3 of  
8 an entity at which employees of such entity are  
9 prohibited from engaging in the unlawful manufacture,  
10 distribution, dispensation, possession, or use of a  
11 controlled substance in accordance with the requirements  
12 of this Act;

13 (2) the term ``employee`` means the employee of a  
14 grantee or contractor directly engaged in the performance  
15 of work pursuant to the provisions of the grant or  
16 contract described in section 2 or 3;

17 (3) the term ``controlled substance`` means a  
18 controlled substance in schedules I through V of section  
19 202 of the Controlled Substances Act (21 U.S.C. 812);

20 (4) the term ``conviction`` means a finding of guilt  
21 (including a plea of nolo contendere) or imposition of  
22 sentence, or both, by any judicial body charged with the  
23 responsibility to determine violations of the Federal or  
24 State criminal drug statutes;

25 (5) the term ``criminal drug statute`` means a

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1 criminal statute involving manufacture, distribution,  
2 dispensation, use, or possession of any controlled  
3 substance;

4 (6) the term ``grantee`` means the department,  
5 division, or other unit of a person or organization  
6 responsible for the performance under the grant;

7 (7) the term ``contractor`` means the department,  
8 division, or other unit of a person or organization  
9 responsible for the performance under the contract; and

10 (8) the term ``Federal agency`` means an agency as  
11 that term is defined in section 552(f) of title 5, United  
12 States Code.

13 **SEC. 8. EFFECTIVE DATE.**

14 Sections 2 and 3 shall be effective 120 days after the  
15 date of the enactment of this Act.